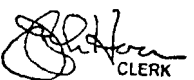


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
**OCT 28 2009**  
  
CLERK

\*\*\*\*\*  
\*  
CHARLES O. RED CLOUD, \* CIV 09-4064  
\*  
Petitioner, \*  
\*  
-VS- \* ORDER  
\*  
ROBERT DOOLEY, Warden, \*  
\*  
Respondent. \*  
\*\*\*\*\*

Petitioner brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This Court has reviewed the file, the Report and Recommendation of Magistrate Judge Simko and the objections of Petitioner Red Cloud to the Report and Recommendation. Petitioner's objections were called "Answering Affidavit" and were timely filed.

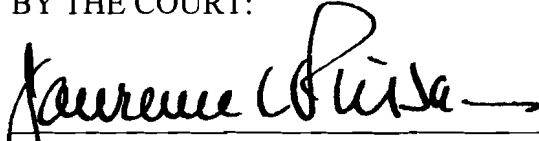
Petitioner's objections raise no new issues that were not dealt with in the Report and Recommendation. This federal habeas petition by Petitioner is untimely as this action was not filed within one year after Petitioner's state judgment became final by the conclusion of direct review or the expiration of time for seeking direct review. 28 U.S.C. § 2244(d)(1).

Accordingly, IT IS ORDERED that:

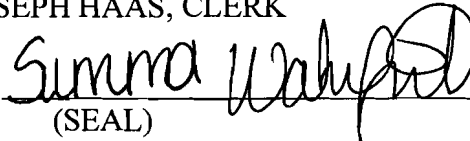
1. The Report and Recommendation (Doc. 18) is ADOPTED.
2. Petitioner's application for writ of habeas corpus (Doc. 1) is DENIED, with prejudice.
3. Petitioner's Motion for Appointment of Counsel (Doc. 12) is DENIED.
3. No certificate of appealability shall issue.
4. Respondent's Motion to Dismiss (Doc. 14) is GRANTED.

Dated this 28<sup>th</sup> day of October, 2009.

BY THE COURT:

  
\_\_\_\_\_  
Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

By: , Deputy  
(SEAL)